

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 UNITED STATES OF AMERICA

4 v.

17 CR 229 (VSB)

5 PINCHAS KRUPNIK,

Plea

6 Defendant.
7 -----x

8 New York, N.Y.
9 June 28, 2017
10 1:10 p.m.

11 Before:

12 HON. VERNON S. BRODERICK

District Judge

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APPEARANCES

18

JOON T. KIM

Acting United States Attorney for the
Southern District of New York

STEPHANIE L. LAKE

Assistant United States Attorney

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22 AVRAHAM MOSKOWITZ

Attorney for Defendant

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1 (Case called)

2 THE COURT: Good afternoon.

3 Mr. Krupnik, I have been informed that you wish to
4 plead guilty to Count Two of indictment 17 Cr. 229, which
5 charges you with possession of child pornography in violation
6 of Title 18, United States Code, section 2252(a), (a)(5)(B),
7 (b)(2), and section 2 of Title 18. Is that correct?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Krupnik, before I accept your plea, I
10 am going to ask you certain questions so that I can establish
11 to my satisfaction that you wish to plead guilty because you
12 are in fact guilty and not for some other reason, and also to
13 establish that you know what you will be giving up by pleading
14 guilty.

15 If you don't understand any of my questions or you
16 want to take a break to speak to Mr. Moskowitz about something,
17 just let me know. We will stop the proceedings, and either I
18 or Mr. Moskowitz will try and answer your question or I will
19 give you the time to speak to Mr. Moskowitz. Okay?

20 THE DEFENDANT: Yes.

21 THE COURT: Ms. Williams, please swear Mr. Krupnik in.

22 (Defendant sworn)

23 THE COURT: Mr. Krupnik, you are now under oath, which
24 means that if you answer any of my questions falsely, you may
25 be prosecuted for the separate crime of perjury. Do you

1 understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: What is your full name?

4 THE DEFENDANT: Pinchas Alex Krupnik.

5 THE COURT: Mr. Krupnik, how old are you?

6 THE DEFENDANT: I'm 26.

7 THE COURT: How far did you get in school?

8 THE DEFENDANT: I have an undergraduate BS in
9 accounting.

10 THE COURT: Have you ever been treated or hospitalized
11 for any mental illness?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Are you now or have you recently been
14 under the care of a doctor or psychiatrist?

15 THE DEFENDANT: I go to therapy once a week.

16 THE COURT: In connection with that therapy, are you
17 currently on any medication, drugs, medicine, pills?

18 THE DEFENDANT: Just for heartburn, your Honor.

19 THE COURT: I take it that the heartburn medication
20 doesn't affect your ability to understand?

21 THE DEFENDANT: No.

22 THE COURT: Have you ever been treated or hospitalized
23 for any type of addiction, either drug or alcohol addiction?

24 THE DEFENDANT: No.

25 THE COURT: Have you had any alcoholic beverages in

1 the past 24 hours?

2 THE DEFENDANT: No.

3 THE COURT: Is your mind clear today?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand what's happening today?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Moskowitz, have you discussed this
8 matter with Mr. Krupnik?

9 MR. MOSKOWITZ: Yes, your Honor.

10 THE COURT: Does he understand the rights that he will
11 be waiving by pleading guilty?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is he capable of understanding the nature
14 of these proceedings?

15 MR. MOSKOWITZ: Yes, your Honor.

16 THE COURT: Do either counsel have any doubt as to Mr.
17 Krupnik's competence to plead guilty at this time?

18 MS. LAKE: No, your Honor.

19 MR. MOSKOWITZ: No, your Honor.

20 THE COURT: On the basis of your responses, Mr.
21 Krupnik, to my questions, my observations of you here in court,
22 and the representations of counsel, I find that you are fully
23 competent to enter an informed plea of guilty at this time.

24 Mr. Krupnik, have you received a copy of the
25 indictment in this case?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you read it or was it read to you?

3 THE DEFENDANT: I went over it with my lawyer.

4 THE COURT: Do you waive its public reading at this
5 time?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you had enough of a chance to discuss
8 with Mr. Moskowitz the charge to which you intend to plead
9 guilty and any possible defenses to that charge?

10 THE DEFENDANT: Yes.

11 THE COURT: Has Mr. Moskowitz explained to you the
12 consequences of entering a plea of guilty?

13 THE DEFENDANT: Yes, he has.

14 THE COURT: Are you satisfied with Mr. Moskowitz's
15 representation?

16 THE DEFENDANT: Yes.

17 THE COURT: I am going to explain to you now certain
18 constitutional rights that you have. These are rights that you
19 will be giving up if you enter a guilty plea. Listen
20 carefully. As I mentioned before, if you don't understand any
21 of my questions, stop us, and we will try and explain it to you
22 more fully. Or if you want to speak to Mr. Moskowitz about
23 some of the questions or about anything, we will take the time
24 and allow you to do that. Okay?

25 THE DEFENDANT: Okay. Thank you.

1 THE COURT: It is important, actually critically
2 important, that you understand each of the questions.

3 Mr. Krupnik, under the Constitution and laws of the
4 United States, you have a right to plead not guilty to the
5 charge in the information. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you were to plead not guilty, you would
8 be entitled to a speedy and public trial by a jury on the
9 charges contained in the indictment. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: At a trial you would be presumed innocent
12 and the government would be required to prove you guilty by
13 competent evidence beyond a reasonable doubt before you could
14 be found guilty. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: A jury 12 people would have to agree
17 unanimously that you were in fact guilty and you would not have
18 to prove that you were innocent if you were to go to trial. Do
19 you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: At a trial and at every stage of your
22 case, you are entitled to be represented by a lawyer. If you
23 could not afford a lawyer, one would be appointed at public
24 expense -- in other words, free of charge to you -- to
25 represent you. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: During a trial the witnesses for the
3 government would have to come here to court and testify in your
4 presence. Mr. Moskowitz could cross-examine the witnesses for
5 the government, object to evidence offered by the government,
6 and offer evidence on your own behalf if you so desired. You
7 would also have the right to have subpoenas issued or other
8 process to compel people to come here and testify in your
9 defense. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: At a trial, although you would have a
12 right to testify if you chose to do so, you would also have the
13 right not to testify. If you decided not to testify, no one,
14 including the jury, could draw any inference or suggestion of
15 guilt from the fact that you did not testify. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you had a full opportunity to discuss
19 with Mr. Moskowitz whether there is a basis to seek suppression
20 of some or all of the evidence against you based on the ground
21 that your constitutional rights were violated?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that by pleading guilty
24 you are giving up your right to seek suppression of any of the
25 evidence against you?

1 THE DEFENDANT: Yes.

2 THE COURT: If you were convicted at trial, you would
3 have a right to appeal that verdict. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Even now, Mr. Krupnik, as you are entering
6 a guilty plea here, you have a right to change your mind and to
7 plead not guilty and to go to trial on the charges contained in
8 the indictment. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If you plead guilty and I accept your
11 plea, you are going to give up your right to trial and the
12 other rights I have just discussed, other than the right to a
13 lawyer, which you have regardless of whether or not you plead
14 guilty. But there will be no trial, and I will enter a
15 judgment of guilty and sentence on the basis of your plea after
16 I have considered a pre-sentence report and whatever
17 submissions I get from the government and Mr. Mr. Moskowitz.
18 So there will be no appeal with respect to whether the
19 government could use the evidence it has against you or with
20 respect to whether you did or did not commit this crime. Do
21 you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you plead guilty, you will also have to
24 give up your right not to incriminate yourself because in a
25 moment I'm going to ask you what it is that you did that makes

1 you believe that you are guilty of the charge to which you are
2 pleading guilty. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you will have to
5 admit an acknowledge your guilt?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand each of the rights I
8 have just explained to you?

9 THE DEFENDANT: I do.

10 THE COURT: Mr. Krupnik, are you willing to give up
11 your right to trial and the other rights I have just discussed
12 with you?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that you are charged
15 with possession of child pornography?

16 THE DEFENDANT: Yes.

17 THE COURT: AUSA Lake, would you please state the
18 elements of the offense.

19 MS. LAKE: Yes, your Honor. There are three elements
20 to this offense:

21 First, that the defendant knowingly possessed child
22 pornography;

23 Second, that the child pornography was transported in
24 or affecting interstate or foreign commerce; and

25 Third, that the defendant knew of the sexually

1 explicit nature of the material and that the visual depiction
2 was of an actual minor engaged in that sexually explicit
3 conduct.

4 The government also would be required to prove by a
5 fair preponderance of the evidence that venue is proper in the
6 Southern District of New York

7 THE COURT: Mr. Krupnik, do you understand that if you
8 were to go to trial, the government would have to prove each
9 and every one of the elements the prosecutor just mentioned
10 beyond a reasonable doubt with the exception of venue? Do you
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Now I'm going to tell you what the maximum
14 penalty is for the trial to which you are pleading guilty. The
15 maximum means that is the most that could possibly be imposed.
16 It does not mean that that is what you will necessarily
17 receive. But you need to understand that by pleading guilty
18 you are subjecting yourself to any combination of punishments
19 up to the maximum I'm about to describe to you. Do you
20 understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: First, I'm going to tell you about
23 restrictions on your liberty. The maximum imprisonment for
24 this crime is 20 years' imprisonment, which must be followed by
25 at least 5 years of supervised release. The maximum supervised

1 release term you face is life.

2 Supervised release means that when you are released
3 from prison you will be subject to the supervision of the
4 probation department. There will be rules of supervised
5 release that you will have to follow. If you violate those
6 rules, you can be returned to prison without a jury trial to
7 serve additional time and with no credit for the time served in
8 prison as a result of your sentence and no credit for any time
9 spent on post-release supervision. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: You should also understand that there is
12 no parole in the federal system so that if you are sentenced to
13 jail time, you will not be released early on parole. There is
14 a limited opportunity to earn credit for good behavior, but you
15 will have to serve at least 85 percent of the time to which you
16 are sentenced. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: In addition to restrictions on your
19 liberty, there are also certain maximum financial penalties.
20 The maximum allowable fine is \$250,000. In addition, I can
21 order that you pay restitution to any person or entity injured
22 as a result of your criminal conduct. I note from my reading
23 of your plea agreement that you have agreed to make
24 restitution. Is that correct?

25 THE DEFENDANT: Yes.

1 THE COURT: In addition, I can also order that you
2 forfeit all property derived from the offense or used to
3 facilitate the offense. However, I understand again on the
4 basis of your plea agreement that in lieu of forfeiture you
5 have consented in your plea agreement to the destruction of the
6 following property: a Dell laptop computer, a Samsung Galaxy S4
7 cell phone, and a Samsung Galaxy S7 Edge cell phone. Is that
8 correct?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: In addition, and finally I should say, I
11 must order a mandatory special assessment. The special
12 assessment will be either \$100 if you are indigent or, if you
13 are not indigent, in other words, if you are financially able,
14 it would be \$5,000. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that these are the
17 maximum penalties that you face?

18 THE DEFENDANT: I do.

19 THE COURT: In addition to understanding the maximum
20 punishment, as I mentioned earlier, you also face the mandatory
21 minimum term of supervised release of 5 years. Do you
22 understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Krupnik, are you a United States
25 citizen?

1 THE DEFENDANT: I am.

2 THE COURT: Do you understand that as a result of your
3 guilty plea you may lose certain valuable civil rights to the
4 extent that you have them or could otherwise obtain them, such
5 as the right to vote, the right to hold public office, the
6 right to serve on a jury, and the right to possess any kind of
7 firearm? Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you serving any sentence, state or
10 federal, or being prosecuted in state court for any crime?

11 THE DEFENDANT: No.

12 THE COURT: Are you currently on parole?

13 THE DEFENDANT: No.

14 THE COURT: Do you understand that if your lawyer or
15 anyone else has attempted to predict for you what your sentence
16 would be, their prediction could be wrong?

17 THE DEFENDANT: Yes.

18 THE COURT: No one -- not your lawyer, not the
19 government's lawyer -- no one can give you any assurance of
20 what your sentence will be because I'm going to decide your
21 sentence. As I mentioned earlier, I'm not going to do that
22 now. I'm going to wait until I receive the pre-sentence report
23 from the probation department, do my own independent
24 calculation of the sentencing guidelines that would apply in
25 your case, consider it and any possible departures from it, as

1 well as consider the factors in Title 18, United States Code,
2 section 3553(a) to determine what an appropriate sentence would
3 be for you. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you discussed these issues with Mr.
6 Moskowitz?

7 THE DEFENDANT: I have.

8 THE COURT: Even if your sentence is different from
9 what your lawyer or anyone else has told you it might be, even
10 if it's different from what you expect or what is contained in
11 your plea agreement that you have with the government, you will
12 still be bound by your guilty plea and I will not allow you to
13 withdraw your guilty plea. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: As I mentioned, I have a copy here of a
16 letter dated June 20, 2017.

17 MS. LAKE: Your Honor, this is the original, if you
18 would like it.

19 THE COURT: Ms. Williams, if you could please show Mr.
20 Krupnik the document.

21 Mr. Krupnik, is that your plea agreement in front of
22 you?

23 THE DEFENDANT: Yes.

24 THE COURT: Is that your signature on the last page of
25 that document?

1 THE DEFENDANT: It is.

2 THE COURT: Did you sign that document earlier today
3 in the presence of your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: Before you signed it, did you read it?

6 THE DEFENDANT: I did.

7 THE COURT: Did you discuss it with Mr. Moskowitz
8 before you signed it?

9 THE DEFENDANT: I did.

10 THE COURT: Did you fully understand it before you
11 signed it?

12 THE DEFENDANT: Yes.

13 THE COURT: Ms. Williams, if I could ask you to hand
14 the original of the plea agreement back to AUSA Lake for the
15 government to hold.

16 Mr. Krupnik, one of the features of your agreement
17 with the government is that you agreed on the guideline range
18 that applies in your case, is that correct?

19 THE DEFENDANT: Yes.

20 THE COURT: The agreement is binding on you, it is
21 binding on the government, it is binding on Mr. Moskowitz, but
22 it is not binding on me. As I mentioned, I have my own
23 obligation to do a sentencing calculation -- in other words, a
24 guideline calculation -- before I determine what an appropriate
25 sentence is for you.

1 I'm not saying I would come up with a different range
2 than the one the government has agreed to with you in your plea
3 agreement. But if I do, then I will not let you withdraw your
4 plea even if the range I determine is higher than the one you
5 agreed to with the government. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: In your plea agreement you have waived
8 your right to appeal or otherwise challenge any sentence within
9 or below 168 to 210 months. In other words, if I sentence you
10 to 210 months or less, you would have no right to appeal or
11 otherwise challenge that sentence. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Does this written plea agreement
14 constitute your complete and total understanding of the entire
15 agreement between you and the government?

16 THE DEFENDANT: Yes.

17 THE COURT: Has anything been left out?

18 THE DEFENDANT: I don't think so.

19 THE COURT: When you read it, did you think there is a
20 sentence missing or something?

21 THE DEFENDANT: No.

22 THE COURT: Other than what is written in the
23 agreement, has anyone made any promise or offered you any
24 inducement to plead guilty or to sign the agreement?

25 THE DEFENDANT: No.

1 THE COURT: Has anyone threatened you or forced you to
2 plead guilty or to sign the plea agreement?

3 THE DEFENDANT: No.

4 THE COURT: Has anyone made any promise to you as to
5 what your sentence will be?

6 THE DEFENDANT: No.

7 THE COURT: Mr. Krupnik, we are at the point in the
8 proceeding where I'm asking you what it is that you did that
9 makes you believe that you are guilty of the offense to which
10 you wish to plead guilty.

11 THE DEFENDANT: Between 2014 and 2016 I had possessed
12 child pornography on my computer that I got off the interstate
13 on my computer and phones.

14 THE COURT: When you did this, were you in Manhattan,
15 the Bronx?

16 THE DEFENDANT: Manhattan.

17 THE COURT: When you did this, when you say you
18 possessed it, it was either with your computer or over the
19 phone?

20 THE DEFENDANT: Yes.

21 THE COURT: Ms. Lake, are there any additional
22 questions you believe I should ask?

23 MS. LAKE: Perhaps it is implied, but whether the
24 defendant knowingly possessed child pornography.

25 THE COURT: In other words, this wasn't material that

1 was randomly sent to you; you knew that it was coming to you?

2 THE DEFENDANT: Yes.

3 THE COURT: You intended to possess it?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Moskowitz, do you know of any valid
6 defense that would prevail at trial or do you know of any
7 reason why Mr. Krupnik should not plead guilty at this time?

8 MR. MOSKOWITZ: No, your Honor.

9 THE COURT: AUSA Lake, if you could summarize what the
10 government's evidence would have been had Mr. Krupnik gone to
11 trial.

12 MS. LAKE: Yes, your Honor. That evidence would
13 include photographs, videos, and chats from the defendant's
14 electronic devices and online accounts, the defendant's post-
15 arrest statements, user information from online service
16 providers, and law enforcement testimony.

17 THE COURT: Mr. Krupnik, did you hear what the
18 prosecutor just said?

19 THE DEFENDANT: I did.

20 THE COURT: Do you understand that with regard to all
21 of that evidence, you are waiving your right to challenge that
22 evidence?

23 THE DEFENDANT: Yes.

24 THE COURT: Do both counsel agree that there is a
25 sufficient factual predicate for the guilty plea?

1 MS. LAKE: Yes, your Honor.

2 MR. MOSKOWITZ: Yes, your Honor.

3 THE COURT: Does either counsel know of any reason I
4 should not accept Mr. Krupnik's guilty plea?

5 MS. LAKE: No, your Honor.

6 MR. MOSKOWITZ: No, your Honor.

7 THE COURT: Mr. Krupnik, because you acknowledge that
8 you are in fact guilty as charged in the indictment, in Count
9 Two of the indictment, because I'm satisfied that you know of
10 your rights, including your right to go to trial, and that you
11 are aware of the consequences of your plea, including the
12 sentence which might be imposed, and because I find that you
13 are knowingly and voluntarily pleading guilty, I'm accepting
14 your plea, and I'll enter a judgment of guilty on Count Two of
15 the indictment.

16 As I mentioned earlier, the probation department is
17 going to be preparing a pre-sentence report. In connection
18 with that they are going to want to interview you.

19 Mr. Moskowitz, do you want to be present for that
20 interview?

21 MR. MOSKOWITZ: Yes, your Honor.

22 THE COURT: Mr. Krupnik, that interview will not occur
23 unless your attorney is there with you. What I do ask, though,
24 Mr. Krupnik, is that if you speak to the probation office, that
25 anything you tell them needs to be the absolute truth.

1 In addition, I would ask that once the report is
2 prepared, you and Mr. Moskowitz will have an opportunity to go
3 over it before it is finalized. If there are any inaccuracies,
4 if there is anything that you think should be added to the
5 report, I ask that you speak to Mr. Moskowitz about that so he
6 could raise it with the probation department in the first
7 instance and raise it with me if it is still an issue at the
8 time of your sentencing. Okay?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That report is one aspect. I mentioned
11 I'm going to read the submissions of your attorney and the
12 submissions of the government. But I'm also going to read that
13 pre-sentence report. So it is critically important that
14 everything in there be as accurate as possible.

15 Ms. Williams, sentencing date.

16 THE CLERK: October 6th.

17 THE COURT: Is that around the holidays, Mr.
18 Moskowitz?

19 MR. MOSKOWITZ: Yes, your Honor. October 6th and
20 October 13th, Fridays in that month, are out. Just so the
21 Court knows, I begin a trial October 2nd in state court, which
22 is probably going to run two months. Given the fact that Mr.
23 Krupnik is at liberty, I don't have a problem doing the
24 probation report over the summer, even doing submissions or
25 beginning to prepare submissions. I think once we get into the

1 October period it is going to start to become difficult for me.
2 I have no problem putting it over to late November or early
3 December.

4 THE COURT: All right.

5 THE CLERK: November 3rd at 10 a.m.

6 THE COURT: Mr. Moskowitz, do you think you will still
7 be on trial at that time?

8 MR. MOSKOWITZ: I probably will be. Fridays I'm
9 expecting we will be off. What I would suggest, however,
10 Judge, I have a 10 o'clock sentencing in front of Judge Koeltl
11 that day. So 11:00 even 12:00 would be fine.

12 THE COURT: 12:30 on November 3rd?

13 MR. MOSKOWITZ: That's fine, Judge.

14 THE COURT: I have just asked Ms. Lake if you or one
15 of your colleagues could provide the factual statement to the
16 probation office within the next two weeks.

17 MS. LAKE: Yes, your Honor.

18 THE COURT: Mr. Moskowitz, if you could contact
19 probation just to get a date for the interview.

20 MR. MOSKOWITZ: Yes, I will do that.

21 THE COURT: Thank you. Mr. Moskowitz, my rules do
22 provide for defense submissions two weeks and the government's
23 submission one week before trial. If you want to get them in
24 early, that's fine also. If you could, that would be great.
25 If not if not, two weeks before trial -- I apologize.

1 MR. MOSKOWITZ: Before sentencing.

2 THE COURT: Yes. Two weeks before sentencing.

3 Is there anything else we need to deal with today, Ms.

4 Lake?

5 MS. LAKE: Nothing from the government.

6 MR. MOSKOWITZ: Nothing from the defense. Thank you.

7 THE COURT: Mr. Krupnik, I will see you on November

8 3rd.

9 THE DEFENDANT: Thank you, your Honor.

10 THE COURT: Thank you. We stand adjourned.

11 (Adjourned)

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